IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 11399 of 2004

Between:

D.Rama Swamy S/o.Chandraiah
Narsampet, Warangal District.

..... PETITIONER

AND

The Deputy Commissioner of Prohibition and Excise,
Warangal Division, Warangal, Warangal District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction more particularly one in nature of writ of mandamus declaring the order in O.A.No.7135 of 2004 dated 2.4.2004 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad is illegal, arbitrary and also the proceedings Cr.No.3851/2003/P&Ex/A3-1, dt.29.9.2003 passed by the respondent as illegal arbitrary and set a side the same.

For the Petitioner: MR.P.GIRI KRISHNA, Advocate

For the Respondent No.: GP FOR SERVICES II

The Court made the following :

ORAL ORDER:(per GB,J)

The order of Andhra Pradesh Administrative Tribunal (for short Tribunal) in O.A.No.7135 of 2004, dated 02.04.2004 is challenged in this Writ Petition.

2. The petitioner was working as Prohibition and Excise Inspector, Narsampet, Warangal District. On a radio message sent by the Deputy Superintendent of Police, he was placed under suspension on 29-09-2003 on the ground of possessing disproportionate assets to the known sources of his income. The said suspension came to be challenged before the Tribunal in the above OA. Earlier when the interim order was refused, the petitioner filed Writ Petition No.3627 of 2004 and the same was disposed of by this Court on 27.2.2004 remitting the matter back to the Tribunal for fresh consideration. The Tribunal now passed a final order on 02.04.2004 dismissing the application filed by the petitioner. Against the said order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that in case of disproportionate assets to the known sources of income there need not be any automatic suspension, but on the other hand it is open for the authorities to transfer the officer from the place where he was working so as to avoid interference by the officer concerned during the enquiry. In this connection, the

learned counsel referred to U.O.Note No.2885/SC.E1/98-3, G.A. (Ser.-E) Dept., dated 11-06-1999 and also U.O.Note No.1818/SPL.B/2000-2, G.A.D.(Spl.B), dated 21-11-2001, where it has been clearly stated that in case of the trap, the officer has to be necessarily placed under suspension, but in case of disproportionate assets the suspension need not be resorted immediately following registration of the case, but he may be transferred to a far off non focal post to avoid likelihood of their tampering with records and influencing the witnesses, etc., By a further memo dated 10-06-2002 issued by the Government it is further clarified that in case of disproportionate assets it would be open for the authorities to place the employee under suspension, provided, the Director General of A.C.B. proposes the suspension of the accused officer, pending investigation. In the instant case, there is no such recommendation and only the petitioner was placed under suspension on a radio message issued by the Deputy Superintendent of Police, A.C.B. Therefore, the order passed by the authorities is in contravention of the instructions issued by the Government from time to time. The Tribunal failed to take this aspect into consideration and therefore erred in dismissing the application.

4. On the other hand the learned Government Pleader for Services-II submits that placing the petitioner under suspension cannot be said to be without jurisdiction inasmuch as the disciplinary proceedings were initiated against him and the suspension cannot be said to be an illegal action prior to the initiation of the proceedings.

5. We have heard the learned counsel for the parties at length.

6. There is no dispute that the authority has got power to place the petitioner under suspension, but however the Government issued guidelines from time to time as to the circumstances envisaged in case of trap and also in case of disproportionate assets. As far as the case relating to trap, there is a specific direction that the officer should be placed under suspension immediately, pending further disciplinary action. But in case of disproportionate assets, the Government have left a note of caution to the Department that the officers who were involved in the case of disproportionate assets, need not be suspended, but they should be transferred to a non-focal point so as to avoid interference by the accused employee with the departmental enquiries. By latest instructions, the Government have further clarified that if there is a

recommendation from the Director General of Police, A.C.B., proposing suspension, then the officer has to be placed under suspension. But in the instant case there is no recommendation of the Director General of Police, A.C.B., proposing suspension, but the authorities acted on the radio message issued by the Deputy Superintendent of Police, A.C.B. The Tribunal in the impugned order did not concentrate on this aspect. Under those circumstances, we are inclined to set aside the order of the Tribunal and hold that the order of suspension as also the order issued by the Government in Proceedings Cr.No.3851/2003/P&Ex/A3-1, dated 29-09-2003 are illegal and contrary to the guidelines issued by the Government in Memo.No.554/Ser.C/93-6, General Administration Department, dated 26-12-1994 and U.O.Note dated 11-06-1999.

7. Accordingly the Writ Petition is allowed and the impugned order is quashed. However, we leave it open to the authorities to transfer the petitioner to any other non focal point as suggested by the Government in the Circulars referred to above. No order as to costs.

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G.BIKSHAPATHY, J

Dated: 07-07-2004

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B.SESHASAYANA REDDY, J

LSK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the Seventh day of July Two thousand and Four.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

To

1. The Deputy Commissioner of Prohibition and Excise,
Warangal Division, Warangal, Warangal District.

2. Two C.Cs. to Government Pleader for Services II,

High Court Buildings, Hyderabad, (OUT)

3. Two C.D. copies.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 11399 of 2004

Dated: 07.07.2004